

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

James A. Russell,

Plaintiff,

v.

**Case No. 3:15-cv-331
Judge Thomas M. Rose**

Warden, Marion Correctional Institution,

Defendant.

**DECISION AND ENTRY ADOPTING SUPPLEMENTAL REPORT AND
RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE
MERZ (DOC. 24), OVERRULING PETITIONER'S OBJECTIONS TO THE
CHIEF MAGISTRATE'S REPORT AND RECOMMENDATIONS, (DOC.
22, 26), DENYING PETITION FOR WRIT OF HABEAS CORPUS, (DOC.
1), AND TERMINATING THE INSTANT CASE.**

On March 25, 2016, Magistrate Judge Michael R. Merz filed a Report and Recommendation, (Doc. 20), suggesting that the Court deny Petitioner James A. Russell's Petition for a Writ of Habeas Corpus. (Doc. 1). Petitioner James A. Russell filed Objections to the Magistrate's Report and Recommendations, (Doc. 22), prompting the Magistrate Judge to file a Supplemental Report and Recommendation. (Doc. 24). Petitioner then filed Objections to the Magistrate's Supplemental Report and Recommendation. (Doc. 26).

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a *de novo* review of the record in this case, taking into consideration both of Petitioner's objections. Upon said review, the Court finds that Plaintiff's objections, (Docs. 22, 26), to the Magistrate Judge's Supplemental Report and Recommendations, (Doc. 24), are not well taken and

they are hereby **OVERRULED**. Wherefore, the Court **ADOPTS IN FULL** the Magistrate Judge's Report and Recommendations. (Doc. 24). Petition for a Writ of Habeas Corpus, (Doc. 1), is hereby **DISMISSED WITH PREJUDICE**.

Because reasonable jurists would not disagree with this conclusion as to Grounds Two through Seven, Petitioner is hereby denied a certificate of appealability and the Court certifies to the Sixth Circuit that any appeal would be objectively frivolous and therefore Petitioner will not be permitted to proceed *in forma pauperis*.

However, in light of *Foster v. Chatman*, 587 U.S. ___, 2016 U.S. LEXIS 3486 (2016), Russell's *Batson* claim would be debatable among reasonable jurists. Petitioner is therefore **GRANTED A CERTIFICATE OF APPEALABILITY ON GROUND ONE**.

DONE and **ORDERED** this Monday, August 22, 2016.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE